

§ 97-40.1. Second Injury Fund.

(a) There is hereby created a fund to be known as the "Second Injury Fund," to be held and disbursed by the Industrial Commission as hereinafter provided.

For the purpose of providing money for said fund the Industrial Commission may assess against the employer or its insurance carrier the payment of not to exceed two hundred fifty dollars (\$250.00) for the loss, or loss of use, of each minor member in every case of a permanent partial disability where there is such loss, and shall assess not to exceed seven hundred fifty dollars (\$750.00) for fifty percent (50%) or more loss or loss of use of each major member, defined as back, foot, leg, hand, arm, eye, or hearing.

(b) The Industrial Commission shall disburse moneys from the Second Injury Fund in unusual cases of second injuries as follows:

- (1) To pay additional compensation in cases of second injuries referred to in G.S. 97-33; provided, however, that the original injury and the subsequent injury were each at least twenty percent (20%) of the entire member; and, provided further, that such additional compensation, when added to the compensation awarded under said section, shall not exceed the amount which would have been payable for both injuries had both been sustained in the subsequent accident.
- (2) To pay additional compensation to an injured employee who has sustained permanent total disability in the manner referred to in the second paragraph of G.S. 97-35, which shall be in addition to the compensation awarded under said section; provided, however, that such additional compensation, when added to the compensation awarded under said section, shall not exceed the compensation for permanent total disability as provided for in G.S. 97-29.
- (3) To pay compensation and medical expense in cases of permanent and total disability resulting from an injury to the brain or spinal cord in the manner and to the extent hereinafter provided.

The additional compensation and treatment expenses herein provided for shall be paid out of the Second Injury Fund exclusively and only to the extent to which the assets of such fund shall permit.

(c) In addition to payments for the purposes hereinabove set forth, the Industrial Commission may, in its discretion, make payments from said fund for the following purposes and under the following conditions:

- (1) In any case in which total and permanent disability due to paralysis or loss of mental capacity has resulted from an injury to the brain or spinal cord, the Industrial Commission may, in its discretion enter an award and pay compensation and reasonable and necessary medical, nursing, hospital, institutional, equipment, and other treatment expenses from the Second Injury Fund during the life of the injured employee in cases where the injury giving rise to such disability occurred prior to July 1, 1953, and the last payment of compensation has been made subsequent to January 1, 1941. Such compensation and medical expense shall be paid only from April 4, 1947, and after the employer's liability for compensation and treatment expense has ended, and in every case in which the injury resulting in paralysis due to injury to the spinal cord occurred subsequent to April 4, 1947, and prior to July 1, 1953, the liability of the employer and his insurance carrier to pay compensation and medical expense during the life of the injured employee shall not be affected by this section.

- (2) When compensation is allowed from the fund in any case under subdivision (1) of subsection (c), the Commission may in its discretion authorize payment of medical, nursing, hospital, equipment, and other treatment expenses incurred prior to the date compensation is allowed and after the employer's liability has ended if funds are reasonably available in the Second Injury Fund for such purpose after paying claims in cases of second injuries as specified in G.S. 97-33 and 97-35. Should the fund be insufficient to pay both compensation and treatment expenses, then the said expenses may, in the discretion of the Commission, be paid first and compensation thereafter according to the reasonable availability of funds in the fund. (1953, c. 1135, s. 2; 1957, c. 1396, s. 4; 1963, c. 450, s. 3; 1977, c. 457; 1991, c. 703, s. 11; 1993 (Reg. Sess., 1994), c. 679, s. 6.1.)